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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 JERRY D. BRUCE,

Civil No. 04-1310-AA
OPINION AND ORDER

11 Plaintiff,

12 vs.

13 JO ANNE B. BARNHART,
Commissioner of Social Security,

14 Defendant.

15 _____
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25 AIKEN, Judge:

26 Claimant, Jerry Bruce, brings this action pursuant to the
27 Social Security Act (the Act), 42 U.S.C. § 405(g), to obtain
28

1 judicial review of a final decision of the Commissioner. The
2 Commissioner denied plaintiff's application for Disability
3 Insurance Benefits (DIB) under Title II of the Social Security
4 Act, and for Supplemental Security Income (SSI) disability
5 benefits under Title XVI. 42 U.S.C. §§ 401-33, 1381-1383f. For
6 the reasons set forth below, the Commissioner's decision is
7 affirmed and this case is dismissed.

8 **PROCEDURAL BACKGROUND**

9 Plaintiff protectively filed his application for DIB and
10 SSI benefits on December 1, 1998. Tr. 17. His applications were
11 denied initially, and upon reconsideration. Tr. 17, 26-29. On
12 May 23, 2000, plaintiff appeared before an Administrative Law
13 Judge (ALJ). The ALJ found a closed period of disability
14 beginning June 3, 1997, to July 19, 2000. Tr. 17.

15 On December 18, 2001, plaintiff filed the current Title II
16 and XVI applications. Tr. 267-69, 442-45. These applications
17 were denied as were his requests for reconsideration. Tr. 233-
18 34. On September 3, 2003, plaintiff appeared before a second ALJ
19 who on March 23, 2004, denied plaintiff's request for benefits.
20 Tr. 14-24. The Appeals Council denied plaintiff's request for
21 review, tr. 10-12, making the ALJ's decision the final agency
22 decision. See 20 C.F.R. §§ 404.981, 416.1481.

23 **STATEMENT OF THE FACTS**

24 Plaintiff's medical and employment history are set out in
25 detail by the ALJ. Tr. 17-24. This court accepts the ALJ's
26 thorough recitation of plaintiff's medical history, and therefore
27 will not repeat it here.

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STANDARD OF REVIEW

This court must affirm the Secretary's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record. Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). The court must weigh "both the evidence that supports and detracts from the Secretary's conclusions." Martinez v. Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

The initial burden of proof rests upon the claimant to establish disability. Howard v. Heckler, 782 F.2d 1484, 1486 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months. . . ." 42 U.S.C. § 423(d) (1) (A).

The Secretary has established a five-step sequential process for determining whether a person is disabled. Bowen v. Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502, 416.920. First the Secretary determines whether a claimant is engaged in "substantial gainful activity." If so, the claimant is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§ 404.1520(b), 416.920(b).

In step two the Secretary determines whether the claimant

1 has a "medically severe impairment or combination of
2 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
3 §§ 404.1520(c), 416.920(c). If not, the claimant is not
4 disabled.

5 In step three the Secretary determines whether the
6 impairment meets or equals "one of a number of listed impairments
7 that the Secretary acknowledges are so severe as to preclude
8 substantial gainful activity." Id.; see 20 C.F.R.
9 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively
10 presumed disabled; if not, the Secretary proceeds to step four.
11 Yuckert, 482 U.S. at 141.

12 In step four the Secretary determines whether the claimant
13 can still perform "past relevant work." 20 C.F.R.
14 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not
15 disabled. If she cannot perform past relevant work, the burden
16 shifts to the Secretary. In step five, the Secretary must
17 establish that the claimant can perform other work. Yuckert, 482
18 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &
19 (f). If the Secretary meets this burden and proves that the
20 claimant is able to perform other work which exists in the
21 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,
22 416.966.

23 DISCUSSION

24 The ALJ found at Step One that plaintiff had not engaged in
25 substantial gainful activity since his alleged disability onset
26 date. Tr. 23. See 20 C.F.R. §§ 404.1520(b), 416.920(b). At
27 Step Two, the ALJ found that plaintiff had the following severe
28 impairments: degenerative joint disease of the right hip,

1 depression with anxiety, and a personality disorder. Tr. 20, 23.
2 See 20 C.F.R. §§ 404.1520(c), 416.920(c). At Step Three, the ALJ
3 found that plaintiff's impairments did not meet or equal the
4 requirements of a listed impairment. Tr. 23. See 20 C.F.R. §§
5 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d).

6 The ALJ next determined that the plaintiff had a residual
7 functional capacity for a modified range of light exertion in
8 that he could stand/walk for two hours in an eight-hour day, sit
9 for six hours in an eight-hour day, occasionally climb, stoop,
10 crouch, or crawl, and could not frequently balance and kneel.
11 Tr. 22. Plaintiff was also found to have slight limitations in
12 his ability to understand, remember, and carry out detailed
13 instructions; interact appropriately with the general public and
14 co-workers; and respond appropriately to changes in a routine
15 work setting. Id. Plaintiff had moderate limitations in his
16 ability to interact appropriately with supervisors and in his
17 ability to respond appropriately to work pressures in a typical
18 work setting. Id. Plaintiff was limited to unskilled work
19 activities. Id.

20 At Step Four, the ALJ found that plaintiff was not able to
21 perform his past relevant work within the residual functional
22 limitations noted above. Tr. 23. See 20 C.F.R. §§
23 404.1520(a)(4)(iv), 404.1520(f), 416.920(a)(4)(iv), 416.920(f).

24 Finally, at Step Five, the ALJ found that plaintiff could
25 perform work existing in significant numbers in the national
26 economy as a parking lot attendant, produce sorter, and small
27 products assembly. Tr. 24. See 20 C.F.R. §§ 404.1520(a)(4)(v),
28 404.1520(g), 416.920(a)(4)(v), 416.920(g).

1 Plaintiff objects only to the ALJ's assessment of his lay
2 witness testimony and asserts that the ALJ erred by "improperly
3 discrediting the testimony" of his wife. Plaintiff's wife
4 completed a third-party questionnaire and testified at the
5 September 3, 2003, hearing. Tr. 31-21, 522-31. The parties
6 agree that an ALJ must give reasons germane to each lay witness
7 to reject that witnesses testimony. Lewis v. Apfel, 236 F.3d
8 503, 511 (9th Cir. 2001). I note, however, that an ALJ need not
9 discuss or reject non-probative evidence and may reject lay
10 evidence when it conflicts with the medical evidence. Vincent ex
11 rel. v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984).

12 The ALJ first found that the lay witnesses testimony was
13 not probative. The lay witness testimony summarized the
14 testimony that the ALJ had already heard from the plaintiff when
15 he testified at the hearing. Further, the ALJ found that the
16 plaintiff was not completely credible as the record contained
17 evidence of plaintiff's non-compliance with treatment,
18 exaggeration, and questionable responses to testing. Tr. 22,
19 373, 383, 438. Second, the ALJ noted that the objective medical
20 evidence did not support the testimony or statements of the lay
21 witness. Tr. 22. Plaintiff was given a questionable diagnosis
22 of back pain as testing was negative, questioned the validity of
23 gait instability, walked with a cane in an "exaggerated" fashion,
24 and failed to complete physician recommended testing for his pain
25 complaints. Tr. 373, 383. Further, plaintiff's psychological
26 testing revealed that plaintiff was exaggerating his
27 difficulties. Tr. 438. The ALJ reasonably found that this
28 evidence does not support the debilitating symptoms alleged by

1 plaintiff and by the lay witness testimony.

2 The ALJ, while he considered the lay witness' testimony,
3 ultimately found that she was not knowledgeable in the medical
4 and/or vocational fields and thus was unable to render opinions
5 on how plaintiff's impairments impact his overall abilities to
6 perform basic work activities. Tr. 22. The ALJ must consider
7 lay witness evidence, however, the ALJ is responsible for
8 resolving conflicts and ambiguities in the evidence. Edlund v.
9 Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001).

10 In sum, I find that the ALJ properly considered the lay
11 witness testimony and rejected that testimony by providing
12 reasons that were germane to the witness. Contrary to
13 plaintiff's assertion, the lay witness testimony did not merit a
14 greater reduction in plaintiff's residual functional capacity
15 than that assigned by the ALJ on the basis of plaintiff's
16 supported impairments.

17 CONCLUSION

18 The Commissioner's decision is based on substantial
19 evidence, and is therefore, affirmed. This case is dismissed.
20 IT IS SO ORDERED.

21 Dated this 25 day of April 2006.

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25 /s/ Ann Aiken

26 Ann Aiken
27 United States District Judge
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